

STATE OF MICHIGAN
COURT OF APPEALS

HECTOR SANTOS-CASTRO a/k/a HECTOR F.
SANTOS,

UNPUBLISHED
October 27, 1998

Petitioner-Appellee,

v

No. 203220
Wayne Circuit Court
LC No. 97-712675

SHELLY PAYNE,

Respondent-Appellant.

Before: Hoekstra, P.J., and Cavanagh and O’Connell, JJ.

PER CURIAM.

Respondent appeals as of right from the ruling of the lower court denying her first motion to rescind the ex parte personal protection order the court granted petitioner pursuant to MCL 600.2950a; MSA 27A.2950(1). We affirm.

First, respondent argues that the lower court erred in granting a personal protection order ex parte. A personal protection order constitutes injunctive relief. MCL 600.2950a(25)(b); MSA 27A.2950(1)(25)(b). See also MCL 600.2950(27)(c); MSA 27A.2950(27)(c). We review a trial court’s decision whether to grant injunctive relief for an abuse of discretion. *Thermatool Corp v Borzym*, 227 Mich App 366, 372; 575 NW2d 334 (1998). In civil cases, an abuse of discretion exists when a decision is so violative of fact and logic that it evidences a defiance of judgment and is not the exercise of reason, but rather, of passion or bias. *Hadfield v Oakland Co Drain Comm’r*, 218 Mich App 351, 355; 554 NW2d 43 (1996). Furthermore, we will sustain the trial court’s findings of fact unless we are convinced that we would have reached a different result. See, e.g., *Fruehauf Trailer Corp v Hagelthorn*, 208 Mich App 447, 449-452; 528 NW2d 778 (1995).

“An ex parte personal protection order shall be issued . . . if it clearly appears from specific facts shown by verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued.” MCL 600.2950a(9); MSA 27A.2950(1)(9). Here, petitioner’s complaint and motion for a personal protection order indicated that

he received threatening telephone calls from respondent as well as “uninvited visits” at his workplace where respondent attempted to confront petitioner. Without further information, it was apparent to the lower court that the specific facts of respondent’s alleged actions threatened petitioner with immediate and irreparable injury. We are not convinced that we would have reached different findings of fact had we been sitting in place of the lower court. Accordingly, we cannot conclude that the court’s decision to grant the ex parte personal protection order was a decision so violative of fact and logic that it evidences a defiance of judgment.

Next, respondent argues that the lower court should have granted her motion to rescind the personal protection order. MCL 600.2950a(1); MSA 27A.2950(1)(1) permits a court to restrain or enjoin an individual from engaging in stalking or aggravated stalking, and MCL 600.2950a(10); MSA 27A.2950(1)(10) permits the restrained individual to subsequently file a motion to rescind the order. Here, the lower court denied respondent’s motion to rescind, finding that its original order remained necessary to prevent further conflict between the parties.

“Stalking” is defined as “a willful course of conduct involving repeated or continuous harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.” MCL 750.411h(1)(d); MSA 28.643(8)(1)(d). At the hearing on his motion, petitioner specifically identified harassment as the basis for his petition. “Harassment” is defined in the stalking statute as “conduct directed toward an individual that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress.” “Unconsented contact,” in turn, is further defined as “any contact with another individual that is initiated or continued without that individual’s consent or in disregard of that individual’s expressed desire that the contact be avoided or discontinued.” MCL 750.411h(1)(e); MSA 28.643(8)(1)(e). It includes, but is not limited to, any of the following:

- (i) Following or appearing within the sight of that individual.
- (ii) Approaching or confronting that individual in a public place or on private property.
- (iii) Appearing at that individual’s workplace or residence.
- (iv) Entering onto or remaining on property owned, leased, or occupied by that individual.
- (v) Contacting that individual by telephone.
- (vi) Sending mail or electronic communications to that individual.
- (vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual. [*Id.*]

Here, petitioner’s complaint and motion named five of these seven subparts.

At the hearing on her motion, respondent argued that rescission was necessary because she had not contacted petitioner for more than two weeks before he filed his complaint and motion for the personal protection order. In contrast, petitioner informed the court of several other instances of unconsented contact since the filing of his petition, including an alleged telephone call from respondent to the home of petitioner's work supervisor. Based on this record, we are unconvinced that we would have reached different findings of fact had we been sitting in place of the lower court. Accordingly, we again decline to find that the lower court abused its discretion in refusing to rescind the personal protection order it granted petitioner.

Next, respondent argues that the trial court should have granted her motion for attorney fees and costs because petitioner's complaint and motion for a personal protection order were devoid of arguable factual and legal merit. See MCL 600.2591; MSA 27A.2591. We will not reverse a trial court's finding that a claim was not frivolous unless the finding is clearly erroneous. *Meagher v Wayne State University*, 222 Mich App 700, 727; 565 NW2d 401 (1997). "The circumstances existing at the time a case is commenced is of critical importance in determining if a lawsuit has a basis in fact or law." *Id.* The stalking statute on which the personal protection order statute is based provides a remedy for persons harassed or threatened by another individual's course of conduct. Petitioner indicated that he felt harassed and threatened by respondent's actions. We are not left with a definite and firm conviction that the trial court made a mistake in finding that petitioner's complaint and motion for a personal protection order was not frivolous. Accordingly, the trial court did not err in denying respondent's motion for attorney fees and costs.

Last, respondent argues that MCL 600.411h; MSA 28.643(8) and MCL 600.411i; MSA 28.643(9), the stalking and aggravated stalking statutes on which the personal protection order statutes are based, are unconstitutionally vague and grant the trier of fact unlimited discretion to determine when a personal protection order is necessary. Having rejected these precise arguments in *People v White*, 212 Mich App 298, 308-315; 536 NW2d 876 (1995), it is unnecessary for us to again revisit this issue. See also *People v Ballantyne*, 212 Mich App 628; 538 NW2d 106 (1995).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Peter D. O'Connell